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IN THE COURT OF APPEALS OF INDIANA

KENNETH LEE CALDWELL,	)	
Appellant-Defendant,	)	
vs.	)	No. 48A05-0608-CR-429
STATE OF INDIANA,	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0512-FB-00354

FEBRUARY 16, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBERTSON, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Kenneth Lee Caldwell entered a guilty plea with an open plea agreement. The trial court sentenced Caldwell to ten years with seven years executed and three years probation on Count 1, a Class B felony of armed robbery, and one year on Count 2, a Class A misdemeanor of resisting law enforcement, to be served concurrent with the sentence on Count 1. Caldwell appeals this sentence.

We affirm.

ISSUE

Caldwell states the issue as: whether the sentence imposed by the trial court was inappropriate under Article VII, Section 6 of the Indiana Constitution, and Indiana Appellate Rule 7(B)?

FACTS

On the evening two days before Christmas, Layla Saunders was returning to her residence after Christmas shopping, and, on the way, she stopped at her grandmother's apartment in the same apartment complex to borrow some scissors. On the way back to her apartment, Saunders noticed someone, later identified as Caldwell, walking down the street in the same direction she was driving. Saunders drove to her apartment, parked her car, and got out. She put her purse over her shoulder and began gathering the Christmas presents she had bought. She felt a tap on her shoulder; however, she thought it was her brother and ignored the tap. She felt the tap again and turned around, only to find a gun stuck in her face. Caldwell spun Saunders around and grabbed at her purse, causing her to fall on the ice. Caldwell continued to tug at Saunders' purse and drag her along the

ice. Saunders eventually dropped her packages and her purse came loose. Caldwell grabbed the purse and ran down the street. Saunders' cell phone was in her purse, which was now in Caldwell's possession, so she ran back to her grandmother's apartment. Saunders saw Caldwell get into a vehicle that was parked in front of her grandmother's apartment.

Saunders reported the robbery. A sheriff's deputy saw Caldwell fleeing and followed him to another address. The deputy identified himself to Caldwell, but Caldwell fled from the deputy. Caldwell was later apprehended. He was Mirandized and then gave a statement admitting that he approached Saunders, demanded her purse and forcibly took the purse from her. Caldwell said the gun he had used was a black CO2 BB gun. Caldwell also admitted fleeing from the officer.

At the sentencing hearing, the trial court found as an aggravating factor that Caldwell had committed two offenses. The mitigating factors were that Caldwell had pled guilty and had no prior criminal record. The trial court then sentenced Caldwell to the advisory sentence of ten years for the Class B felony of armed robbery and one year on the Class A misdemeanor of resisting law enforcement, to be served concurrent with the Class B felony sentence.

DISCUSSION AND DECISION

Sentencing decisions are within the trial court's discretion and will be reversed only upon a showing of an abuse of that discretion. Edmonds v. State, 840 N.E.2d 456, 461 (Ind. Ct. App. 2006), *trans. denied*, 855 N.E.2d 1003, *cert. denied*, 127 S.Ct. 497, 75 USLW 3081, 75 USLW 3229, 75 USLW 3233. Moreover, where the trial court imposes

the statutory presumptive sentence, it is not required to list aggravating or mitigating factors. Childress v. State, 848 N.E. 2d 1073, 1080 (Ind. 2006). A trial court must set forth its reasoning only when deviating from the statutory presumptive sentence. *Id.*

With respect to mitigating factors, it is within the trial court's discretion to determine both the existence and weight of a significant mitigating circumstance. Pennington v. State, 821 N.E.2d 899, 905 (Ind. Ct. App. 2005). Given this discretion, only when there is substantial evidence in the record of significant mitigating circumstances will we conclude that the sentencing court has abused its discretion by overlooking a mitigating circumstance. *Id.* Although the court must consider evidence of mitigating circumstances presented by the defendant, it is neither required to find that any mitigating circumstances actually exist, nor is it obligated to explain why it has found that certain circumstances are not sufficiently mitigating. *Id.* Additionally, the court is not compelled to credit mitigating factors in the same manner as would the defendant. *Id.* An allegation that the trial court failed to identify or find a mitigating circumstance requires the defendant on appeal to establish that the mitigating circumstance is both significant and clearly supported by the record. *Id.*

We are of the opinion that, for the reasons advanced by Caldwell, no error occurred. The trial court did not abuse its discretion in considering Caldwell's arguments related to mitigating factors. Additionally, the trial court was not required to enumerate mitigating and aggravating circumstances because it imposed a presumptive, or advisory, sentence.

When considering Caldwell's argument in light of App. R. 7(B), the State observes that Caldwell committed armed robbery by stalking the victim; confronted the victim when her arms were full; pointed a gun at the victim to intimidate her into relinquishing her purse; pulled the victim's purse from her arm; and fled from police. We are of the further opinion that this evidence is sufficient to show the character of the offender and the nature of the crime.

We would observe that Caldwell's brief challenges his sentence under Ind. App. R. 7(B); however, his argument is directed to the trial court's error in failing to consider purported mitigating factors. *See* Childress, 848 N.E.2d at 1080. The language in Childress treats an identical situation as a waiver.

In any event, the nature of the offense portion of the App. R. 7(B) standard speaks to the statutory presumptive sentence for the class of crimes to which the offense belongs. Corbin v. State, 840 N.E.2d 424, 432 (Ind. Ct. App. 2006). That is, the presumptive sentence is intended to be the starting point for the court's consideration of the appropriate sentence for the particular crime committed. *Id.* The character of the offender portion of the standard refers to the general sentencing considerations and the relevant aggravating and mitigating circumstances. *Id.*

We conclude by observing that the presumptive sentence that Caldwell received is the starting point as well as the end of our consideration relating to App. R. 7(B) standards. There is no need for the trial court to detail aggravating or mitigating circumstances or to address Caldwell's concerns about mitigating factors being overlooked.

CONCLUSION

Caldwell's sentence is not inappropriate.

Judgment affirmed.

NAJAM, J., and BAILEY, J., concur.